



City of San Diego

CARL DEMAIO
CITY COUNCIL – DISTRICT 5

MEMORANDUM

DATE: September 24, 2010

TO: City Attorney Jan Goldsmith

FROM: Councilmember Carl DeMaio

RE: Can City Council Fix Flaws in Prop D?

At yesterday's Chamber of Commerce board meeting, the Mayor asked the Board to delay consideration of Proposition D and instead spend the next two weeks working on a resolution or ordinance with the City Council to provide greater assurance that reforms in city government would actually occur if the proposed tax increase is approved by voters.

It is important the public understand what effect, if any, a simple resolution or ordinance approved by the Mayor and City Council on the eve of an election would have on the implementation of a Proposition put before the voters for approval.

As such, I respectfully ask that your office provide answers to the following key questions:

- Assuming the Council does pass an ordinance or resolution in the near future, can that ordinance or resolution be repealed at a later date by the same or a new Council?
- Assuming the Council does pass an ordinance or resolution in the near future, can that ordinance or resolution be amended at a later date by the same or a new Council?
- Assuming the Council does pass an ordinance or resolution in the near future, can that ordinance or resolution be waived at a later date by the same or a new Council? For example, Municipal code § 22.0228 requires a 6% appropriation for general library operations. City Council has waived every year since FY 2004.

- Proposition D, if passed, would be a voter-approved requirement binding on the City. Does an Ordinance or Resolution approved by the City Council in any way alter or change the requirements, obligations, or protections contained in Proposition D?
- If Proposition D passes and the Mayor and City Council carry-out the conditions as stated in the Proposition, and assuming the City Auditor verifies the conditions have been met, is it possible for another ordinance of the City Council to block or impede imposition of the tax?
- As of today is it possible for the City Council to request that the registrar of voters remove Prop D from the November ballot or must the voters have to still vote on Prop D despite these concerns raised by stakeholders?

Given the time sensitivity related to these questions, I would appreciate it if you could respond as soon as possible.

cc: Mayor Jerry Sanders and City Councilmembers
Andrea Tevlin, Independent Budget Analyst